



General Assembly

***Substitute Bill No. 5116***

*January Session, 2003*

***AN ACT CONCERNING ALTERNATIVE INCARCERATION FOR  
PERSONS WITH PSYCHIATRIC DISABILITIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 54-56d of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2003*):

4 (d) If the court finds that the request for an examination is justified  
5 and that, in accordance with procedures established by the judges of  
6 the Superior Court, there is probable cause to believe that the  
7 defendant has committed the crime for which he is charged, the court  
8 shall order an examination of the defendant as to his competency. The  
9 court [either] may (1) appoint one or more physicians specializing in  
10 psychiatry to examine the defendant, or [it may] (2) order the  
11 Commissioner of Mental Health and Addiction Services to conduct the  
12 examination either (A) by a clinical team consisting of a physician  
13 specializing in psychiatry, a clinical psychologist and one of the  
14 following: A clinical social worker licensed pursuant to chapter 383b or  
15 a psychiatric nurse clinical specialist holding a master's degree in  
16 nursing, or (B) by one or more physicians specializing in psychiatry,  
17 except that no employee of the Department of Mental Health and  
18 Addiction Services who has served as a member of a clinical team in  
19 the course of such employment for at least five years prior to October  
20 1, 1995, shall be precluded from being appointed as a member of a

21 clinical team. If the Commissioner of Mental Health and Addiction  
22 Services is ordered to conduct the examination, [he] the commissioner  
23 shall select the members of the clinical team or the physician or  
24 physicians. If the examiners determine that the defendant is not  
25 competent, they shall then determine whether there is substantial  
26 probability that the defendant, if provided with a course of treatment,  
27 will regain competency within the maximum period of any placement  
28 order under this section, or whether the defendant appears to be  
29 eligible for civil commitment, with monitoring by the Court Support  
30 Services Division, pursuant to subdivision (2) of subsection (h) of this  
31 section, as amended by this act. The court may authorize a physician  
32 specializing in psychiatry, a clinical psychologist, a clinical social  
33 worker licensed pursuant to chapter 383b or a psychiatric nurse  
34 clinical specialist holding a master's degree in nursing selected by the  
35 defendant to observe the examination. Counsel for the defendant may  
36 observe the examination. The examination shall be completed within  
37 fifteen days from the date it was ordered and the examiner or  
38 examiners shall prepare and sign, without notarization, a written  
39 report and file [it] such report with the court within twenty-one  
40 business days of the date of the order. On receipt of the written report,  
41 the clerk of the court shall cause copies to be delivered immediately to  
42 the state's attorney and to counsel for the defendant.

43 Sec. 2. Subsection (h) of section 54-56d of the general statutes is  
44 repealed and the following is substituted in lieu thereof (*Effective*  
45 *October 1, 2003*):

46 (h) (1) If, at the hearing, the court finds that there is a substantial  
47 probability that the defendant, if provided with a course of treatment,  
48 will regain competency within the period of any placement order  
49 under this section, the court shall either (A) order placement of the  
50 defendant for treatment for the purpose of rendering him competent,  
51 or (B) order placement of the defendant at a treatment facility pending  
52 civil commitment proceedings pursuant to subdivision (2) of this  
53 subsection.

54       (2) (A) Except as provided in subparagraph (B) of this subdivision, if  
55       the court makes a finding pursuant to subdivision (1) of this subsection  
56       and does not order placement pursuant to subparagraph (A) of said  
57       subdivision, the court shall, on its own motion or on motion of the  
58       state or the defendant, order placement of the defendant in the custody  
59       of the Commissioner of Mental Health and Addiction Services or the  
60       Commissioner of Children and Families at a treatment facility pending  
61       civil commitment proceedings. The treatment facility shall be  
62       determined by the Commissioner of Mental Health and Addiction  
63       Services or the Commissioner of Children and Families. Such order  
64       shall: (i) Include an authorization for the Commissioner of Mental  
65       Health and Addiction Services or the Commissioner of Children and  
66       Families to apply for civil commitment of such defendant pursuant to  
67       sections 17a-75 to 17a-83, inclusive, or 17a-495 to 17a-528, inclusive, as  
68       appropriate; (ii) permit the defendant to agree to participate  
69       voluntarily in a treatment plan prepared by the Commissioner of  
70       Mental Health and Addiction Services or the Commissioner of  
71       Children and Families, and monitored by the Court Support Services  
72       Division, and require that the defendant comply with such treatment  
73       plan; and (iii) provide that if the application for civil commitment is  
74       denied or not pursued by the Commissioner of Mental Health and  
75       Addiction Services or the Commissioner of Children and Families, or  
76       if, in the case of a defendant who is participating voluntarily in a  
77       treatment plan, such defendant ceases to so participate voluntarily, the  
78       person in charge of the treatment facility, or such person's designee,  
79       shall submit a written progress report to the court pursuant to  
80       subsection (j) of this section, as amended by this act, and the defendant  
81       shall be returned to the court for a hearing pursuant to subsection (k)  
82       of this section. The period of placement and monitoring under such  
83       order shall not exceed the period of the maximum sentence which the  
84       defendant could receive on conviction of the charges against such  
85       defendant, or eighteen months, whichever is less. The Court Support  
86       Services Division shall monitor the defendant's compliance with such  
87       treatment plan and any applicable provisions of such order. If the  
88       defendant has complied with such treatment plan and any applicable

89 provisions of such order, at the end of the period of placement and  
90 monitoring, the court shall approve the entry of a nolle prosequi to the  
91 charges against the defendant or shall dismiss such charges.

92 (B) This subdivision does not apply: (i) To any person charged with  
93 a class A felony, a class B felony, except a violation of section 53a-122  
94 that does not involve the use, attempted use or threatened use of  
95 physical force against another person, or a violation of section 14-227a,  
96 subdivision (2) of subsection (a) of section 53-21 or section 53a-56b,  
97 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b; (ii) to any  
98 person charged with a crime or motor vehicle violation who, as a result  
99 of the commission of such crime or motor vehicle violation, causes the  
100 death of another person; or (iii) unless good cause is shown, to any  
101 person charged with a class C felony.

102 Sec. 3. Subsection (j) of section 54-56d of the general statutes is  
103 repealed and the following is substituted in lieu thereof (*Effective*  
104 *October 1, 2003*):

105 (j) The person in charge of the treatment facility, or [his] such  
106 person's designee, shall submit a written progress report to the court  
107 (1) at least seven days prior to the date of any hearing on the issue of  
108 the defendant's competency; (2) whenever he believes that the  
109 defendant has attained competency; [or] (3) whenever he believes that  
110 there is not a substantial probability that the defendant will attain  
111 competency within the period covered by the placement order; or (4)  
112 whenever the defendant has been placed for treatment pending civil  
113 commitment proceedings pursuant to subdivision (2) of subsection (h)  
114 of this section, as amended by this act, and the application for civil  
115 commitment of the defendant is denied or not pursued. The progress  
116 report shall contain: (A) [the] The clinical findings of the person  
117 submitting the report and the facts on which the findings are based; (B)  
118 the opinion of the person submitting the report as to whether the  
119 defendant has attained competency or as to whether the defendant is  
120 making progress, under treatment, toward attaining competency  
121 within the period covered by the placement order; and (C) any other

122 information concerning the defendant requested by the court, [such as]  
123 including, but not limited to, the method of treatment or the type,  
124 dosage and effect of any medication the defendant is receiving.

125 Sec. 4. Subsection (m) of section 54-56d of the general statutes is  
126 repealed and the following is substituted in lieu thereof (*Effective*  
127 *October 1, 2003*):

128 (m) If at any time the court determines that there is not a substantial  
129 probability that the defendant will attain competency within the  
130 period of treatment allowed by this section, or if at the end of [that]  
131 such period the court finds that the defendant is still not competent,  
132 the court shall either release the defendant from custody or order the  
133 defendant placed in the custody of the Commissioner of Mental Health  
134 and Addiction Services, the Commissioner of Children and Families or  
135 the Commissioner of Mental Retardation. The commissioner given  
136 custody, or [his] the commissioner's designee, shall then apply for civil  
137 commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270  
138 to 17a-283, inclusive, and 17a-495 to 17a-528, inclusive. The court shall  
139 hear arguments as to whether the defendant should be released or  
140 should be placed in the custody of the Commissioner of Mental Health  
141 and Addiction Services, the Commissioner of Children and Families or  
142 the Commissioner of Mental Retardation. If the court orders the release  
143 of a defendant charged with the commission of a crime that resulted in  
144 the death or serious physical injury, as defined in section 53a-3, of  
145 another person, [it] or orders the placement of such defendant in the  
146 custody of the Commissioner of Mental Health and Addiction  
147 Services, the Commissioner of Children and Families or the  
148 Commissioner of Mental Retardation, the court may, on its own  
149 motion or on motion of the prosecuting authority, order, as a condition  
150 of such release or placement, periodic examinations of the defendant  
151 as to his competency. Such an examination shall be conducted in  
152 accordance with subsection (d) of this section, as amended by this act.  
153 Upon receipt of the written report as provided in [said] subsection (d)  
154 of this section, as amended by this act, the court shall, upon the request  
155 of either party filed not later than thirty days after the court receives

such report, conduct a hearing as provided in subsection (e) of this section. Such hearing shall be held not later than ninety days after the court receives such report. If the court finds that the defendant has attained competency, he shall be returned to the custody of the Commissioner of Correction or released, if he has met the conditions for release, and the court shall continue with the criminal proceedings. Periodic examinations ordered by the court under this subsection shall continue until the court finds that the defendant has attained competency or until the time within which the defendant may be prosecuted for the crime with which he is charged, as provided in section 54-193 or 54-193a, has expired, whichever occurs first. The court shall dismiss, with or without prejudice, any charges for which a nolle prosequi is not entered when the time within which the defendant may be prosecuted for the crime with which he is charged, as provided in section 54-193 or 54-193a, has expired. Notwithstanding the erasure provisions of section 54-142a, police and court records and records of any state's attorney pertaining to a charge which is nolle or dismissed without prejudice while the defendant is not competent shall not be erased until the time for the prosecution of the defendant expires under section 54-193 or 54-193a. A defendant who is not civilly committed as a result of an application made by the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation pursuant to this section shall be released. A defendant who is civilly committed pursuant to such an application shall be treated in the same manner as any other civilly committed person.

Sec. 5. Subsection (n) of section 54-56d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(n) The cost of the examination effected by the Commissioner of Mental Health and Addiction Services and of testimony of persons conducting the examination effected by the commissioner shall be paid by the Department of Mental Health and Addiction Services. The cost of the examination and testimony by physicians appointed by the

190 court shall be paid by the Judicial Department. If the defendant is  
191 indigent, the fee of the person selected by the defendant to observe the  
192 examination and to testify on his behalf shall be paid by the Public  
193 Defender Services Commission. The expense of treating a defendant  
194 placed in the custody of the Commissioner of Mental Health and  
195 Addiction Services, the Commissioner of Children and Families or the  
196 Commissioner of Mental Retardation pursuant to subdivision (2) of  
197 subsection (h) of this section, as amended by this act, or subsection (i)  
198 of this section shall be computed and paid for in the same manner as is  
199 provided for persons committed by a probate court under the  
200 provisions of sections 17b-19, 17b-63 to 17b-65, inclusive, 17b-116 to  
201 17b-138, inclusive, 17b-220 to 17b-250, inclusive, 17b-256, 17b-259, 17b-  
202 263, 17b-287, 17b-340 to 17b-350, inclusive, 17b-689, 17b-689b and 17b-  
203 743 to 17b-747, inclusive.

204 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) As used in this section:

205 (1) "Eligible defendant" means a person found by the court to have a  
206 significant psychiatric disability or a history of treatment for a  
207 significant psychiatric disability and who currently is in need of and  
208 would benefit from appropriate and available treatment programs;  
209 and

210 (2) "Psychiatric disability" means a mental or emotional condition  
211 that has substantial adverse effects on the defendant's ability to  
212 function and requires the defendant to receive care and treatment, but  
213 does not include an abnormality manifested primarily by repeated  
214 criminal or other antisocial conduct.

215 (b) There shall be a pretrial program for alternative placement of  
216 eligible defendants accused of a crime or crimes or a motor vehicle  
217 violation or violations for which a sentence to a term of imprisonment  
218 may be imposed, which crimes or violations are not of a serious  
219 nature. Services pursuant to such program may be provided by the  
220 Commissioner of Mental Health and Addiction Services, by the  
221 Commissioner of Children and Families or through a private provider

222 approved by the Commissioner of Mental Health and Addiction  
223 Services or the Commissioner of Children and Families.

224 (c) Except as provided in subsection (d) of this section, the court  
225 may, in its discretion, invoke such program on motion of the  
226 defendant or on motion of a state's attorney or prosecuting attorney  
227 with respect to an eligible defendant (1) who agrees to disclose to the  
228 court the existence of any records of any prior cases and any pending  
229 cases concerning the eligible defendant that came before the courts of  
230 probate regarding such eligible defendant's mental health and the  
231 disposition of such cases, and (2) who can demonstrate to the  
232 satisfaction of the court the benefits to be gained by invoking such  
233 program, provided (A) the eligible defendant agrees to comply with  
234 the conditions of such program, and (B) notice has been given by the  
235 eligible defendant, on a form approved by the office of the Chief Court  
236 Administrator, to the victim or victims of such crime or motor vehicle  
237 violation, if any, by registered or certified mail, and such victim or  
238 victims have an opportunity to be heard thereon. In determining  
239 whether to invoke such program with respect to an eligible defendant  
240 who has been adjudged a youthful offender under the provisions of  
241 sections 54-76b to 54-76n, inclusive, of the general statutes more than  
242 five years prior to the date of such motion, and notwithstanding the  
243 provisions of section 54-76l of the general statutes, the court shall have  
244 access to the youthful offender records of such eligible defendant and  
245 may consider the nature and circumstances of the crime with which  
246 the eligible defendant was charged as a youth.

247 (d) This section does not apply: (1) To any person charged with a  
248 class A felony, a class B felony, except a violation of section 53a-122 of  
249 the general statutes that does not involve the use, attempted use or  
250 threatened use of physical force against another person, or a violation  
251 of section 14-227a, subdivision (2) of subsection (a) of section 53-21 or  
252 section 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or  
253 53a-72b of the general statutes; (2) to any person charged with a crime  
254 or motor vehicle violation who, as a result of the commission of such  
255 crime or motor vehicle violation, causes the death of another person; or

256 (3) unless good cause is shown, to any person charged with a class C  
257 felony.

258 (e) (1) Any eligible defendant who enters the program for  
259 alternative placement pursuant to this section shall agree to the tolling  
260 of any statute of limitations with respect to the crime or violation and  
261 to a waiver of the right to a speedy trial. Such eligible defendant shall  
262 appear in court and shall, under such conditions as the court shall  
263 order, be released to the custody of the Court Support Services  
264 Division. If the eligible defendant refuses to accept or, having  
265 accepted, violates such conditions, the eligible defendant's case shall be  
266 brought to trial. The period of such probation shall not exceed two  
267 years.

268 (2) The court shall order that, as a condition of probation pursuant  
269 to subdivision (1) of this subsection, the eligible defendant participate  
270 in a treatment plan. The provider of treatment services under the  
271 treatment plan shall report not less than once every ninety days to the  
272 Court Support Services Division regarding the progress of the eligible  
273 defendant under such plan, except, in the event of substantial  
274 noncompliance with the treatment plan by the eligible defendant, such  
275 report shall be made as soon as reasonably possible after such  
276 noncompliance. Any eligible defendant who participates in the  
277 program for alternative placement pursuant to this section shall  
278 provide written consent for the furnishing of such reports to the Court  
279 Support Services Division for the duration of such participation.

280 (3) The court may order that, as a condition of probation pursuant to  
281 subdivision (1) of this subsection, the defendant participate in the zero-  
282 tolerance drug supervision program established pursuant to section  
283 53a-39d of the general statutes.

284 (4) If the eligible defendant has reached the age of sixteen years but  
285 has not reached the age of eighteen years, the court may order that, as  
286 a condition of probation pursuant to subdivision (1) of this subsection,  
287 the eligible defendant be referred for services to a youth service bureau

288 established pursuant to section 10-19m of the general statutes,  
289 provided the court finds, through an assessment by a youth service  
290 bureau or its designee, that the eligible defendant is in need of and  
291 likely to benefit from such services.

292 (5) When determining the conditions of probation pursuant to  
293 subdivision (1) of this subsection to order for an eligible defendant  
294 who was charged with a misdemeanor that did not involve the use,  
295 attempted use or threatened use of physical force against another  
296 person or with a motor vehicle violation, the court shall consider  
297 ordering the eligible defendant to perform community service in the  
298 community in which the crime or violation occurred. If the court  
299 determines that community service is appropriate, such community  
300 service may be implemented by a community court designated in  
301 accordance with section 51-181c of the general statutes if the crime or  
302 violation occurred within the jurisdiction of the community court.

303 (6) If the eligible defendant is charged with a violation of section  
304 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181l of the general statutes,  
305 the court may order that, as a condition of probation pursuant to  
306 subdivision (1) of this subsection, the eligible defendant participate in  
307 a hate crimes diversion program as provided in subsection (f) of this  
308 section.

309 (f) If the court orders the eligible defendant to participate in a hate  
310 crimes diversion program pursuant to subdivision (6) of subsection (e)  
311 of this section, the eligible defendant shall pay to the court a  
312 participation fee of four hundred twenty-five dollars. No eligible  
313 defendant may be excluded from such program for inability to pay  
314 such fee, provided (1) such eligible defendant files with the court an  
315 affidavit of indigency or inability to pay, (2) such indigency or inability  
316 to pay is confirmed by the Court Support Services Division, and (3) the  
317 court enters a finding thereof. The Judicial Department shall contract  
318 with service providers, develop standards and oversee appropriate  
319 hate crimes diversion programs to meet the requirements of this  
320 section. Any eligible defendant whose employment or residence makes

321 it unreasonable to attend a hate crimes diversion program in this state  
322 may attend a program in another state that has standards substantially  
323 similar to, or higher than, those of this state, subject to the approval of  
324 the court and payment of the participation fee as provided in this  
325 subsection. The hate crimes diversion program shall consist of an  
326 educational program and supervised community service.

327 (g) If an eligible defendant released to the custody of the Court  
328 Support Services Division pursuant to subdivision (1) of subsection (e)  
329 of this section satisfactorily completes such eligible defendant's period  
330 of probation, the eligible defendant may apply for dismissal of the  
331 charges against the eligible defendant and the court, on finding such  
332 satisfactory completion, shall dismiss such charges. If such eligible  
333 defendant does not apply for dismissal of the charges against the  
334 eligible defendant after satisfactorily completing the eligible  
335 defendant's period of probation, the court, upon receipt of a report  
336 submitted by the Court Support Services Division that the eligible  
337 defendant satisfactorily completed the eligible defendant's period of  
338 probation, may on its own motion make a finding of such satisfactory  
339 completion and dismiss such charges. Upon dismissal, all records of  
340 such charges shall be erased pursuant to section 54-142a of the general  
341 statutes. An order of the court denying a motion to dismiss the charges  
342 against an eligible defendant who has completed such eligible  
343 defendant's period of probation or terminating the participation of an  
344 eligible defendant in the program for alternative placement pursuant  
345 to this section shall be a final judgment for purposes of appeal.

346 Sec. 7. Section 17a-486 of the general statutes is repealed and the  
347 following is substituted in lieu thereof (*Effective October 1, 2003*):

348 Prior to the [arraignment] trial of a person charged [solely with the  
349 commission of a misdemeanor] with a crime other than a class A  
350 felony or a class B felony, except a violation of section 53a-122 that  
351 does not involve the use, attempted use or threatened use of physical  
352 force against another person, the Department of Mental Health and  
353 Addiction Services shall, to the maximum extent possible within the

354 limits of available appropriations, with the consent of [the arrested]  
355 such person, cause a clinical assessment to be performed of any such  
356 person who has previously received mental health services or  
357 treatment for substance abuse from the department or who would  
358 reasonably benefit from such services to determine whether such  
359 person should be referred for community-based mental health  
360 services. If the person is determined to be in need of such services and  
361 is willing to accept the services offered, the court shall be informed of  
362 the result of the assessment and the recommended treatment plan for  
363 consideration by the court in the disposition of the criminal case.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>

**JUD**      *Joint Favorable Subst.*

**APP**      *Joint Favorable*

**PH**        *Joint Favorable*

**HS**        *Joint Favorable*